1941

File No. O Smoke Nuisances /41

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Legal **DEPARTMENT**

A **BRANCH**

Subject:—

Opinions under the Bombay Smoke Nuisances Act 1912.

p 3

File No. O. Smoke Nuisances/41

Std. Sectt. Slip 24 B e.

275 - A

CONTENTS

Legal Department File No. E.O. Smoke Nuisances /1941.

Sr. No.	Compilation No.	Subject	Pages
		Opinions under the Bombay Smoke Nuisances Act, 1912	
1.	O.No.75/6.1.41. O.No.3714/26.4.41.	Sec. 3 (5)(a) Whether a manger can be looked upon as an agent of the owner for the purpose of the ~~definition~~ definition	1-4

Office of the R.L. A.

In order to find out the reasoning of the different view said to have been recently expressed by the City Magistrate, Ahmedabad, and referred to in para. 1 at pages 1-2 ante, the Political and Services Department is requested to obtain and forward a copy of the judgment or other order (and other relevant papers, if any,) in which the question now referred to was dealt with judicially by the Magistrate.

Sd/-
OC
For Remembrancer of Legal Affairs.

U.R. to P.& S.D. 75 dated the 6th January 1941.

Submitted for

The view hitherto always taken by the Smoke Nuisances Department and referred to at p.1 ante appears to be correct. The definition of "owner " in section 3(5(a) of the Bombay Smoke Nuisances Act, 1912 (Bom.VII of 1912), is an inclusive one and according to that definition owner includes "any agent" using the furnace. A manager can be looked upon as an agent of the owner for the purposes of this definition (see "agent " in Black's Law Dictionary). There is nothing in section 3(5)(a) to warrant the view said to have been recently expressed by the City Magistrate, Ahmedabad, that two persons only and not three (Or more) can be prosecuted under the definition of " owner ". In fact a contrary view has been taken by the Sessions Judge, Ahmedabad, in para.6 of his judgment dated 10th September 1940 in criminal miscellaneous Application No. 105 of 1940 . It may , however, be pointed out that for a successful prosecution under the Act the accused must not only be an "agent" (or lessee)of the owner but also an agent or lessee "using the furnace" etc. The question of such agency and such user will always be one of fact to be proved by suitable evidence. See the High Court's Judgment in Criminal Revision Application No. 496 of 1940 (Emp.V.Seth Sakarlal Balabhai).

2. Since it will not be legally correct to hold that the definition of owner does not at any time include a manager or to hold that summonses cannot, in law , be taken out against more that two persons in respect of one offence, the question of suitably amending thedefinition does not survive.

Sd/-
24/4

Remembrancer of Legal Afairs

J.R. to P.& S.D. No. 3714, data 26-4-1941.

A.D.M.

BGK